

# **Retail Trading Hours Act 1987**

Compare between:

[07 May 2007, 01-e0-03] and [11 May 2007, 01-f0-04]

# Western Australia

# **Retail Trading Hours Act 1987**

An Act relating to the hours of trading for retail shops and for other and incidental purposes.

# Part I — Preliminary

#### 1. Short title

This Act may be cited as the *Retail Trading Hours Act* 1987 <sup>1</sup>.

#### 2. Commencement

The provision of this Act shall come into operation on such day or days as is or are, respectively, fixed by proclamation <sup>1</sup>.

#### **3.** Interpretation

- In this Act unless the context otherwise requires (1)
  - "agreement" includes any agreement containing provisions, whether express or implied, under or by virtue of which
    - a person authorises, permits or requires a person operating a retail shop to use, in connection with the retail sale of goods or services at the retail shop, a mark identifying, commonly associated with or controlled by that first-mentioned person;
    - a person grants a right to, or otherwise authorises or (b) permits, a person operating a retail shop to possess. occupy or use the retail shop in connection with the sale of any goods or the provision of any services;
    - a person is entitled or required to supply goods or provide services to the person operating a retail shop for retail sale by the person operating the retail shop;
    - a person operating a retail shop agrees with another (d) person to acquire goods or services from another person (whether a party to the agreement or not) for retail sale by the person operating the retail shop;

"authorised person" means a person authorised in writing by the chief executive officer;

Compare 07 May 2007 [01-e0-03] / 11 May 2007 [01-f0-04] page 2 Extract from www.slp.wa.gov.au, see that website for further information

- "chief executive officer" means the chief executive officer of the department principally assisting the Minister in the administration of this Act;
- "Committee" means the Retail Shops Advisory Committee established under section 17;
- "filling station" means a retail shop referred to in section 10(5);
- "fuel" means fuel for operating a motor vehicle;
- "inspector" means a person designated as an inspector under section 7:
- "member" means a member of the Committee;
- "motor vehicle" has the meaning given to that term in the *Road*Traffic Act 1974 section 5(1);
  - "motor vehicle shop" means a general retail shop or portion of a general retail shop, as the case may be
    - (a) in, on or from which motor vehicles are sold by way of retail sale; or
    - (b) in, on or from which spare parts for motor vehicles are sold by way of retail sale in conjunction with the sale of motor vehicles;
  - "operate" means, in relation to a retail shop, conducting or carrying on the business of a retail shop and includes causing, employing or engaging another person to carry on or conduct that business:
  - "place" includes a building, stall, tent, vehicle, boat or vessel;
  - "prescribed services" means any one or more of the following services
    - (a) hairdressing;
    - (b) pawnbroking or dealing in second-hand goods under the *Pawnbrokers and Second-hand Dealers Act 1994*;
    - (c) broking marine craft or motor vehicles;
    - (d) such other services as may be prescribed;

- "retail sale" means a sale of goods or services that is not for the purposes of their re-sale;
- "retail shop" means any place at, in, on or from which
  - (a) goods are sold by way of retail sale;
  - (b) goods are displayed, kept or sold for retail sale; or
  - (c) prescribed services are provided by way of retail sale;
- "sell" includes barter, supply for profit, offer for sale, expose for sale, send forward or deliver for sale, cause or suffer or permit to be sold and disposal or offer for disposal of goods under credit sale agreement or hire purchase agreement.
- (1a) A place that is otherwise a retail shop does not cease to be a retail shop by reason only that meals or refreshments or both are also sold at that place.
- (2) For the purposes of this Act a place at which
  - (a) orders are received or obtained for the retail sale of goods or services; or
  - (b) goods are held or stored for the purposes of retail sale,
  - is a retail shop notwithstanding that the goods or services are supplied, or, the orders are received or obtained, at another place.
- (3) Notwithstanding anything in this Act, a place at which meals or refreshments are sold or served only to persons who are employed or engaged at that place is not a retail shop for the purposes of this Act.
- (4) For the purposes of this Act the metropolitan area means the part of the State within the area described in the regulations.
  - [Section 3 amended by No. 1 of 1991 s. 4 and 14; No. 88 of 1994 s. 100; No. 47 of 2006 s. 4.]

e 4 Compare 07 May 2007 [01-e0-03] / 11 May 2007 [01-f0-04]
Extract from www.slp.wa.gov.au, see that website for further information

### 4. **Application**

- This Act applies only to the part of the State south of the (1) 26th parallel of South Latitude.
- This Act does not apply to a place that is used for or in (2) connection with
  - a show held by an incorporated agricultural or (a) horticultural society;
  - a bazaar or fair the proceeds of which are intended for (b) religious, charitable or public purposes.
- This Act does not apply to a place that is used as (3)
  - (a) a restaurant or a cafe;
  - a take-away-food shop; (b)
  - (c) a veterinary clinic; or
  - (d) a retail shop and is located in a public passenger transport terminal or station where public passenger transport services are running.
- Nothing in this Act affects the sale or supply of liquor at (4) licensed premises under the Liquor Control Act 1988. [Section 4 amended by No. 73 of 2006 s. 115.]

# **Exemptions**

#### **Interpretation Act applies to orders** <u>5.</u>

- (1) Notwithstanding anything in this Act, An order made by the Minister may by order published in the Government Gazette provide for exemptions fromunder this Act or such of the provisions of this is subsidiary legislation as defined in the Interpretation Act as are specified in the order 1984 section 5.
- Section 43(4) and (7) to (9) of the The Interpretation Act 1984 (2) section 42 applies to an order made under

s. 5

subsection (1section 10(3b) or 14B(4) as though if the order were subsidiary legislation a regulation.

[Section\_5 amended inserted by No. 147 of 1991 2006 s. 5.]

# Part II — Administration

#### **Officers** 6.

There shall be appointed under and subject to Part 3 of the Public Sector Management Act 1994 such officers and other persons as are necessary for the administration of this Act.

[Section 6 amended by No. 32 of 1994 s. 3(2).]

#### 7. **Inspectors**

The chief executive officer may designate any person referred to in section 6 as an inspector.

[Section 7 amended by No. 1 of 1991 s. 14.]

#### 8. Certificate of identity

The chief executive officer shall furnish an inspector with a certificate signed by the chief executive officer certifying that that person has been designated an inspector.

[Section 8 amended by No. 1 of 1991 s. 14.]

### 9. Inspector subject to chief executive officer

In carrying out the functions conferred on an inspector by this Act the inspector shall give effect to any direction given by the chief executive officer.

[Section 9 amended by No. 1 of 1991 s. 14.]

# Part III — Retail trading hours

#### 10. Categories of retail shops

- (1) For the purposes of this Act retail shops are assigned different categories as follows
  - general retail shops;
  - (b) small retail shops;
  - (c) special retail shops; and
  - (d) filling stations.
- (2) Subject to this Act, any retail shop that is not a small retail shop, a special retail shop or a filling station shall be regarded as a general retail shop.
- (3) Subject to this Act, a retail shop shall be regarded as a small retail shop if
  - only neither motor vehicles, nor goods or services that (a) are prescribed for the purposes of sale at a small retail shopthis paragraph, are sold or provided at the retail shop;
  - (b) the retail shop is owned by one eligible person or not more than 46 eligible persons trading in partnership or by a body corporate with not more than 46 shareholders all of whom are eligible persons;
  - the retail shop is operated for the benefit of the eligible (ba) persons referred to in paragraph (b);
  - (bb) the eligible persons referred to in paragraph (b) are personally and actively engaged in the retail shop;
  - not more than 513 persons (inclusive of the eligible (bc) persons who own and operate the retail shop) but excluding any person who is employed at the retail shop as an apprentice, as defined in the *Industrial Training* Act 1975 section 4(1)) work in the retail shop at any one and the same time; and

Compare 07 May 2007 [01-e0-03] / 11 May 2007 [01-f0-04] Extract from www.slp.wa.gov.au, see that website for further information

- (bd) the retail shop is owned and operated in accordance with the directions given under subsection (3b);
- (be) no owner of the retail shop is related, in the opinion of the chief executive officer, to an owner of another retail shop that is in such close proximity to the first-mentioned retail shop that, in the opinion of the chief executive officer, those retail shops are to be regarded as occupying the same location; and
  - (c) the chief executive officer has issued a certificate in relation to the retail shop certifying that it is a small retail shop in terms of this subsection, and that certificate has not been cancelled.
- (3a) A person is not an eligible person for the purposes of subsection (3) unless
  - (a) in relation to a case where the person is the only person in question the person
    - (i) is a natural person; and
    - (ii) does not own or operate, either alone or together with any other person, more than 23 retail shops except as a shareholder in a listed corporation as defined underin the Companies (Western Australian) Code 3 Commonwealth Corporations Act 2001 section 9;
  - (b) in relation to a case where the person in question is one of a group of persons, the person
    - (i) is a person to whom the provisions of paragraph (a)(i) and (ii) apply;
    - (ii) does not own or operate another retail shop together with a person who is outside that group of persons; and
    - (iii) does not himself or herself own or operate a retail shop alone if one of the 2 or more other persons in the group ownseach own or operates operate a retail shop that is not owned or

# s. 10

		(iv)	operated together with the other persons in the group; and does not himself or herself own or operate a retail shop alone if another person in the group owns or operates 2 or more retail shops that are not owned or operated together with the other persons in the group.
(3aa)	The m	natters tl	hat the chief executive officer may have regard to
			ning whether an owner of a retail shop is related to
			nother retail shop for the purposes of
	subsec	ction (3)	)(be) include —
	(a)	wheth	er one owner is —
		(i)	the spouse or de facto partner of the other owner;
		(ii)	a child of the other owner or of the spouse or de
			facto partner of the other owner;
		(iii)	a parent of the other owner or of the spouse or de
			facto partner of the other owner; or
		(iv)	a brother or sister of the other owner or of the
			spouse or de facto partner of the other owner;
	(b)	wheth	er one owner is a related body corporate in
		relatio	on to the other owner;
	(c)	wheth	er one owner is a corporation and the other owner
		<u>is —</u>	
		(i)	an officer of the corporation; or
		(ii)	a majority shareholder in the corporation;
	(d)	wheth	er one owner is accustomed or under an
	(3)		ation, whether formal or informal, to act in
		accord	dance with the directions, instructions or wishes of
			her owner in relation to the operation of the
		<u>fīrst-n</u>	nentioned owner's retail shop;
	(e)	wheth	er one owner is —
		(i)	an employee or partner of the other owner; or

	(ii)	an agent, banker, solicitor, accountant, auditor or
		other person acting in any capacity for or on
		behalf of the other owner;
	and	
	(f) wheth	er one owner is —
	<u>(i)</u>	a trustee for the other owner; or
	(ii)	a trustee of a trust of which the other owner is a
		discretionary or other beneficiary.
(3ab)	In subsection	<u>(3aa) —</u>
	"corporation	" has the meaning given to that term in the
		nwealth Corporations Act 2001 section 57A;
	"officer" has	the meaning given to that term in the
	Common	nwealth Corporations Act 2001 section 9;
	"related bod	y corporate" has the meaning given to that term
		ommonwealth Corporations Act 2001 section 9.
(3ac)	A person who	o operates a small retail shop is required to notify
(300)	•	cutive officer within 14 days after —
		on becomes or ceases to be an owner of the retail
	shop;	· · · · · · · · · · · · · · · · · · ·
	-	owner of the retail shop is a body corporate — a
	5 6	n becomes or ceases to be a shareholder of the
		corporate.
	<u>23<b>4</b></u> j	<u></u> -

- (3b) The Minister may by order give directions for the purposes of subsection (3) and any such order may include directions with respect to —
  - (a) the persons who shall be, and, the persons who shall not be, regarded as owners for the purposes of subsection (3);
  - the persons for whose benefit a small retail shop may be (b) owned and operated; and

- the extent to which any person other than a person who owns or operates a small retail shop may benefit from the operation of the small retail shop;
- the extent to which the natural persons who operate the (d) retail shop shall be personally and actively engaged in the operations of the retail shop;
- such other matters (including a requirement that any statement made for the purposes of this section be verified by statutory declaration) as the Minister considers necessary,

and effect shall be given to any such order.

Without affecting anything in the Interpretation Act 1984 sections 41 to 47 of that Act apply to and in relation to an order made under subsection (3b) as though the order were regulations.

### repealed]

- (3d)A person who is aggrieved by a decision of the chief executive officer refusing the issue of a certificate under subsection (3)(c) may appeal to the Minister whose decision is final.
  - Subject to this Act, a retail shop shall be regarded as a special (4) retail shop if —
    - (a) a certificate is issued by the chief executive officer in relation to the retail shop specifying it to be a special retail shop within one of the categories of special retail shops prescribed for the purposes of this paragraph; and
    - only the goods or services or both that are prescribed in (b) relation to a special retail shop of that category are sold or provided at the retail shop.
  - (5) A retail shop shall be regarded as a filling station if the whole or part of the business of the retail shop constitutes the sale of fuel and for the purposes of this Part any pump or contrivance in a

Compare 07 May 2007 [01-e0-03] / 11 May 2007 [01-f0-04] page 12 Extract from www.slp.wa.gov.au, see that website for further information

filling station for supplying fuel is deemed to be included in the filling station.

[Section 10 amended by No. 1 of 1991 s. 6 and 14.]; No. 47 of 2006 s. 6.]

# 11. Issue and cancellation of certificates for small retail shops and special retail shops

- (1) A person who desires to operate a small retail shop or a special retail shop at any place shall apply to the chief executive officer for a certificate in relation to that place in accordance with the regulations.
- (2) If the chief executive officer is satisfied in relation to an application under subsection (1) that there is no reason for the refusal of the application the chief executive officer shall issue a certificate in terms of the application.
- (3) The chief executive officer shall not issue a certificate certifying a filling station to be a small retail shop or a special retail shop.
- (4) The chief executive officer may cancel a certificate certifying a retail shop to be a small retail shop or a special retail shop if the chief executive officer is satisfied
  - (a) in relation to a small retail shop
    - (i) that any motor vehicle is, or any goods or service other than goods or a service prescribed under for the purposes of section 10(3)(a) is are, sold or provided at that retail shop;
    - (ii) that the retail shop is not owned or operated in terms of section 10(3) and (3b); or
    - (iii) that the retail shop is operated during the hours it is notification has not been given as required to be closed under this Act; by section 10(3ac);

or

Retail trading hours

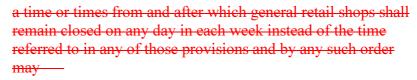
- in relation to a special retail shop (b)
  - that any goods or service other than goods or service prescribed as goods or a service in relation to a special retail shop of that category, are sold or is provided at that retail shop; or
  - (ii) that the special retail shop is operated during the hours it is required to be closed under this Act.
- Where under subsection (4) the chief executive officer cancels a (5) certificate certifying a retail shop to be a small retail shop or a special retail shop the retail shop shall be deemed to be a general retail shop for the purposes of this Act.
- The cancellation of a certificate under this section does not (6) prevent a person from being prosecuted for an offence against this Act.

[Section 11 amended by No. 1 of 1991 s. 7 and 14; No. 47 of 2006 s. 7.1

#### **12.** Trading hours for retail shops

- Subject to this Act and any order made under section 12E(1) (1) that affects the trading hours of the general retail shop, a general retail shop shall be closed
  - on Monday, Tuesday, Wednesday and Friday in each week until 8 a.m. and from and after 6 p.m.;
  - on Thursday in each week, until 8 a.m. and from and (b) after 9 p.m.;
  - (c) on Saturday in each week, until 8 a.m. and from and after 5 p.m.;
  - on Sunday in each week; and (d)
  - on each public holiday and public half-holiday.
- hstanding anything in subsection (1)(a), (b) or (c) the Minister may by order published in the Government Gazette fix

Compare 07 May 2007 [01-e0-03] / 11 May 2007 [01-f0-04] page 14 Extract from www.slp.wa.gov.au, see that website for further information



- direct that the order applies to such portion or portions of the State as is or are, respectively, specified in the order; and
- (b) impose such terms, conditions or restrictions as the Minister thinks fit including a condition fixing the closing time or times for general retail shops in the area to which the order applies on any day in each week referred to in subsection (1)(a), (b) or (c) while the order remains in force.
- (1b) An order under subsection (1a) may be amended or revoked by the Minister by an order published in the Government Gazette.
- Subject to this Act a small retail shop or special retail shop shall be closed on every day of the year until 6 a.m. and from and after 11.30 p.m.

# [(1a), (1b)] repealed

- Subsection (1) does not apply to
  - a general retail shop in a tourism precinct or holiday resort, as defined in section 12A(4);
  - a general retail shop to which an order under (b) section 12A applies by the operation of subsection (3) of that section; or
  - (c) a motor vehicle shop.

[Section 12 amended by No. 1 of 1991 s. 8.]

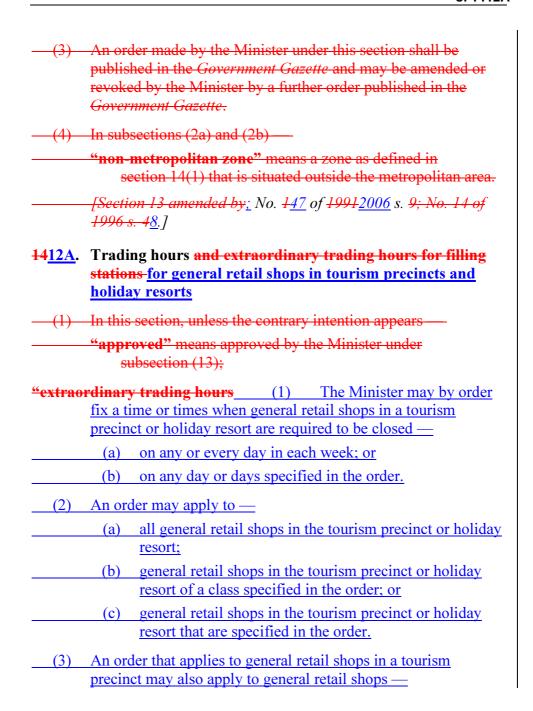
## Special provisions for certain areas and certain shops

(1) Notwithstanding anything in section 12(1)(c) where the local government of a district that is, in whole or part, is outside the metropolitan area applies to the Minister for the closing of general

Compare 07 May 2007 [01-e0-03] / 11 May 2007 [01-f0-04] Extract from www.slp.wa.gov.au, see that website for further information retail shops in the district or in the portion of the district outside the metropolitan area on and after 1 p.m. on Saturday of each week the Minister may by order direct that general retail shops in the district or in the portion thereof outside the metropolitan area, as the case requires, shall close on and after 1 p.m. on Saturday in each week and the order shall have effect accordingly.

- Notwithstanding anything in section 12(1)(c), where the Minister is satisfied that the persons or the majority of the persons operating general retail shops in which are sold or provided goods or services of a particular class are in favour of those goods or services being not sold or provided on Saturday in each week from and after 1 p.m. the Minister may by order, direct that any general retail shop or any portion of a general retail shop, as the case requires, in which the class of goods or the class of services specified in the order, are sold or provided, shall be closed on Saturday in each week from and after 1 p.m. and the order shall have effect accordingly.
- Notwithstanding anything in section 14(2)(b), where the local government of a district that includes a non-metropolitan zone applies to the Minister for the closing of filling stations in that non-metropolitan zone on and after 1 p.m. on Saturday of each week the Minister may by order direct that, subject to section 14(14), filling stations in the non-metropolitan zone shall be closed on and from 1 p.m. on Saturday in each week and the order shall have effect accordingly.
- Where a non-metropolitan zone forms part of more than one local government district an application under subsection (2a) shall be made by the local governments of each of those districts, but where all the local governments in question do not apply the application shall be deemed to have been made only in relation to the portions of the non-metropolitan zone within the districts of the local governments that are applicants under that subsection and any order made by the Minister in relation to such application shall have effect only in those districts.

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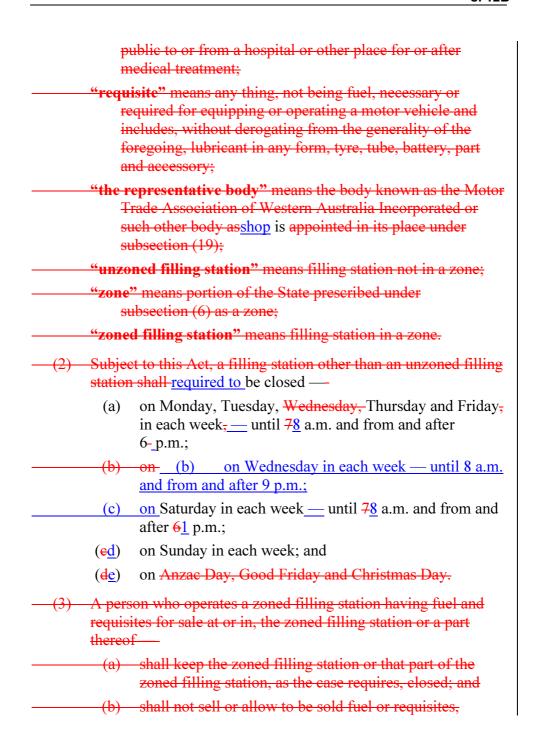


Compare 07 May 2007 [01-e0-03] / 11 May 2007 [01-f0-04] page 17

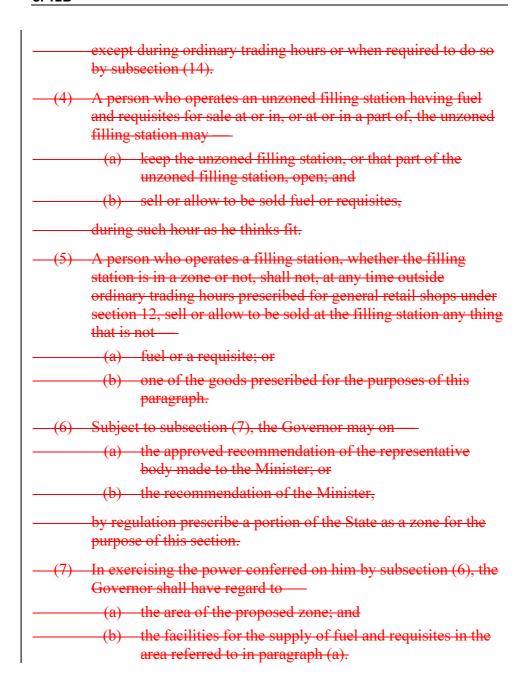
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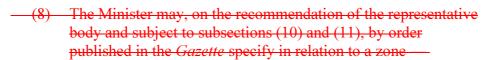
# s. 12B

	(a) that are in the immediate vicinity of the tourism precinct; and
	(b) that are specified, or that are of a class specified, in the order.
	order.
(4)	In this section —
	"Fremantle tourism precinct" means the area or areas
	prescribed for the purposes of this definition;
	"holiday resort" means any time other than ordinarythe Rockingham holiday resort, Rottnest Island holiday resort or Wanneroo holiday resort;
_	"Perth tourism precinct" means the area or areas prescribed for the purposes of this definition;
	"Rockingham holiday resort" means the area or areas
	prescribed for the purposes of this definition;
	"Rottnest Island holiday resort" means the area or areas
	prescribed for the purposes of this definition;
	"tourism precinct" means the Perth tourism precinct or
	Fremantle tourism precinct;
	"Wanneroo holiday resort" means the area or areas prescribed
	for the purposes of this definition.
	[Section 12A inserted by No. 47 of 2006 s. 9.]
<u>12B.</u>	Trading hours for motor vehicle shops
	Subject to this Act and any order made under
	section 12E(1) that affects the trading hours;
	"motor vehicle" means a of the motor vehicle as defined by
	the Road Traffic Act 1974;
	"ordinary trading hours" means the hours which under subsection (2) a filling station may be open;
	"public ambulance" means shop, a motor vehicle used
	exclusively for the purpose of conveying a member of the



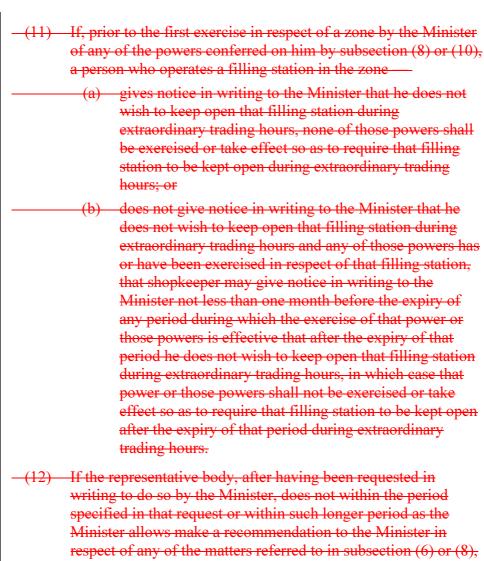
### s. 12B





- which filling station or filling stations in the zone shall be open, and the days and times during which the filling station, or the respective days and times during which those respective filling stations, if more than one, shall be open for the sale of fuel and requisites during extraordinary trading hours; and
- whether all forms of fuel or requisites, or any form of fuel or requisite only, shall be sold by the shopkeeper of the filling station so specified, or the shopkeepers of the filling stations so specified, during the days and times so specified,
- but shall exercise the power conferred by this subsection so that fuel and requisites will be available during extraordinary trading hours at such filling station or filling stations in the zone only as are necessary in order to cater for requirements during extraordinary trading hours.
- The Minister may by order published in the Gazette revoke or amend an order made under subsection (8).
- The Minister may, subject to subsection (11), exercise any power conferred on him by subsection (8) or (9) in respect of any zoned filling station the operator of which is not a member of the representative body, notwithstanding that the representative body has not made a recommendation in respect of that zoned filling station, but in so doing the Minister shall as far as is practicable preserve in respect of that zoned filling station uniformity with the matters specified by orders made on the approved recommendation of the representative body under subsection (8) in respect of other filling stations in the same zone as that zoned filling station.

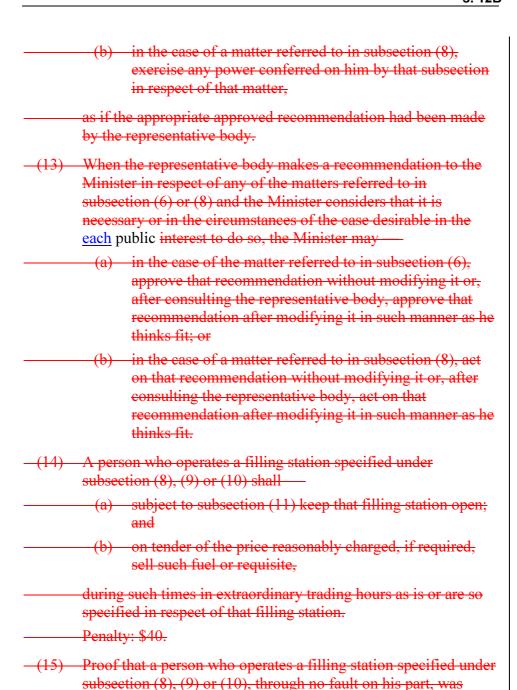
### s. 12B



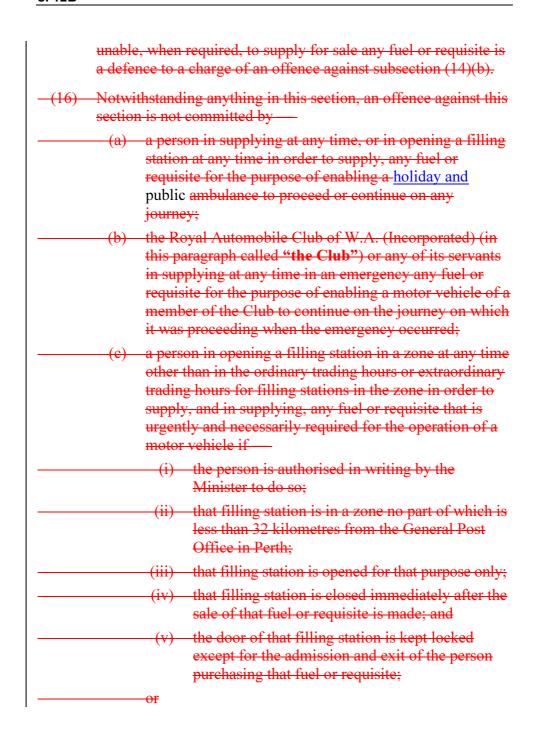
the Minister may (a) in the case of a matter referred to in subsection (6),

make the recommendation and the Governor may exercise the power conferred on him by that subsection in respect of that matter; or

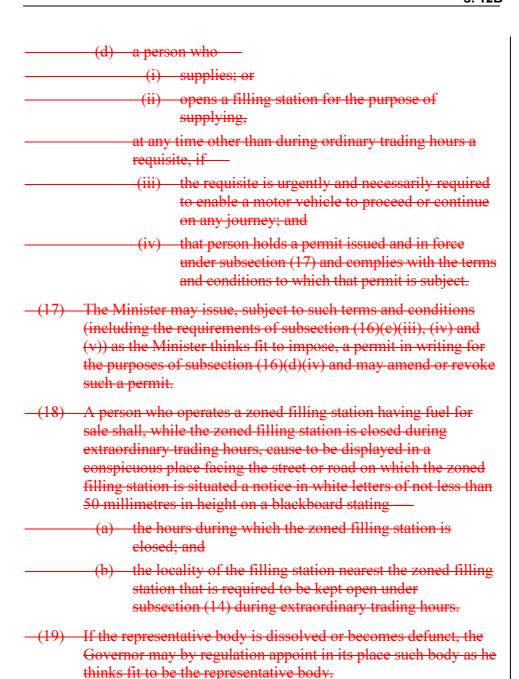
page 22



### s. 12B



Compare 07 May 2007 [01-e0-03] / 11 May 2007 [01-f0-04] Extract from www.slp.wa.gov.au, see that website for further information



### s. 12C

<del>(20)</del>	If an agreement relating to a lease, letting or the sale and
	purchase of, or a licence to occupy, premises the whole or part
	of which is used or intended by the parties to that agreement to
	be used for the sale of any fuel or requisite was made prior to, or
	was current on, 1 January 1964, that agreement shall be deemed
	to include provision that, if

- any party to that agreement claims that because of any of the provisions of this section any of the provisions of that agreement should be reviewed and adjusted; and
- (b) the parties to that agreement cannot agree in respect of the review and adjustment referred to in paragraph (a),

the differences of those parties shall be settled on reference to arbitration under the Commercial Arbitration Act 1985.

Without limiting the operation of section 16, where a term or covenant of an agreement relating to a filling station requires the person operating the filling station to open the filling station for more than 61 hours in a week, then the term or covenant is null and voidhalf-holiday.

[Section-14 amended 12B inserted by No. 147 of 1991 2006 s. <del>10;</del> 9.7

**12C.** No. 84 of 2004 s. 80.] restriction on trading hours for small retail shops

### **Permits**

Notwithstanding anything in this Part a person who operates a A small retail shop, or, a body consisting may be open at any time.

> [Section 12C inserted by No. 47 of persons who operate a class of 2006 s. 9.7

### Trading hours for special retail shops-or 12D.

Subject to this Act and any order made under section 12E(1) that affects the trading hours of the special retail shop, a special

Compare 07 May 2007 [01-e0-03] / 11 May 2007 [01-f0-04] page 26 Extract from www.slp.wa.gov.au, see that website for further information

retail shop is required to be closed on every day of the year until 6 a.m. and from and after 11.30 p.m..

[Section 12D inserted by No. 47 of 2006 s. 9.]

### 12E. Variation of trading hours

- (1)The Minister may by order vary the trading hours of retail shops by —
  - (a) requiring retail shops to be closed at a time or times when the shops would otherwise not be required to be closed under section 12(1), 12B or 12D; or
  - authorising retail shops to be open at a time or times when the shops would otherwise be required to be closed under any of those provisions.
- An order varying the trading hours of general retail shops in a part of the State, the metropolitan area (other than an order under section 12A) can have effect only
  - in relation to a day or days within the period of 28 days ending on 1 January; or
  - (b) to extend the trading hours of general retail shops on a particular day to no later than 9 p.m. for the purpose of compensating for trading hours that are lost by general retail shops in the metropolitan area on a particular day in the same week between 6 p.m. and 9 p.m. because of a public holiday or public half-holiday.
- Subject to subsection (2), an order varying the trading hours of general retail shops may apply to
  - all general retail shops; (a)
    - general retail shops of a specified class; (b)
      - general retail shops in a specified area; or (c)
    - (d) a specified general retail shop.
  - An order varying the trading hours of motor vehicle shops may apply to —

# <u>s. 14</u>

In this section —  "specified", in relation to an order, means specified in the order.  [Section 12E inserted by No. 47 of 2006 s. 9.]  Repealed by No. 47 of 2006 s. 10.]  No restriction on trading hours for filling stations
"specified", in relation to an order, means specified in the order.
"specified", in relation to an order, means specified in the
In this section —
(b) a specified day or specified days.
(a) any or every day in each week; or
<u>to —</u>
An order varying the trading hours of retail shops may apply
goods and services, are sold or provided.
in which one or more classes of specified goods or services, or
(b) any specified portion of retail shops,
(a) all retail shops; or
An order varying the trading hours of retail shops may apply to —
*
<ul><li>(c) special retail shops in a specified area; or</li><li>(d) a specified special retail shop.</li></ul>
(b) special retail shops of a specified class;
(a) all special retail shops;
apply to —
An order varying the trading hours of special retail shops may
(d) a specified motor vehicle shop.
(c) motor vehicle shops in a specified area; or
(b) motor vehicle shops of a specified class;
(a) all motor vehicle shops;

## [Section 14 inserted by No. 47 of 2006 s. 11.]

### 14A. Sale of goods at filling stations

- (1) A person who operates a filling station is not, at any time outside the trading hours referred to in section 12(1), to sell or allow to be sold at the filling station any thing that is not
  - fuel or an accessory;
  - one of the goods prescribed for the purposes of this (b) paragraph;
  - (c) in the case of a small filling station fuel or an accessory or one of the goods prescribed for the purposes of paragraph (b) or this paragraph; or
  - (d) in the case of a prescribed small filling station fuel or an accessory or one of the goods prescribed for the purposes of paragraph (b) or (c) or this paragraph.
- (2) In this section —

## "accessory" means —

- (a) lubricant in any form, tyre, tube, battery, part or accessory; or
- any other thing, other than fuel, required to equip or (b) operate a motor vehicle.

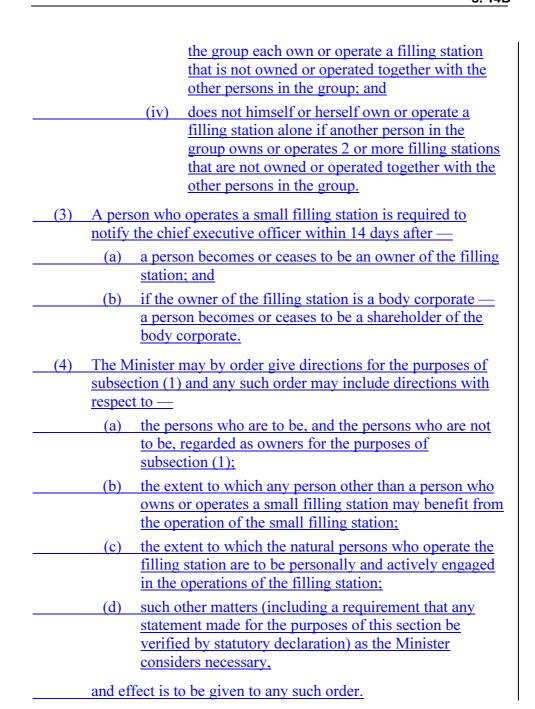
[Section 14A inserted by No. 47 of 2006 s. 11.]

#### 14B. **Small filling stations**

- For the purposes of section 14A(1)(c), a filling station is to be (1) regarded as a small filling station if —
  - (a) the filling station is owned by
    - (i) one eligible person;
    - not more than 6 eligible persons trading in (ii) partnership; or
    - a body corporate with not more than (iii) 6 shareholders all of whom are eligible persons;

# s. 14B

(1-)	ha Cilina station is an area of Contha hangest after
	he filling station is operated for the benefit of the eligible persons referred to in paragraph (a);
(c) t	he eligible persons referred to in paragraph (a) are personally and actively engaged in the filling station;
(d) r	not more than 10 persons (including the eligible persons who own and operate the filling station) work in the filling station at any one and the same time;
(e) t	he filling station is owned and operated in accordance with the directions given under subsection (4); and
<u>e</u> <u>c</u> <u>i</u>	he chief executive officer for a permit to open the shop operated by him or the shops operated by its has issued a certificate in relation to the filling station certifying that it is a small filling station in terms of this subsection, and that certificate has not been cancelled.
(2) A person	n is not an eligible person for the purposes of
subsection	on (1) unless —
	n relation to a case where the person is the only person
<u>1</u>	n question, the person —
	(i) is a natural person; and
	(ii) does not own or operate, either alone or together with any other person, more than 3 filling stations except as a shareholder in a listed corporation as defined in the Commonwealth Corporations Act 2001 section 9;
(b) i	n relation to a case where the person in question is one
<u>C</u>	of a group of persons, the person—
	(i) is a person to whom the provisions of
	paragraph (a)(i) and (ii) apply;
	(ii) does not own or operate another filling station together with a person who is outside that group of persons;
	(iii) does not himself or herself own or operate a



### s. 14C

# 14C. Issue and cancellation of certificates for small filling stations (1) A person who desires to operate a small filling station at any place is to apply to the chief executive officer for a certificate in relation to that place in accordance with the regulations. If the chief executive officer is satisfied in relation to an application under subsection (1) that there is no reason for the refusal of the application, the chief executive officer is to issue a certificate in terms of the application. A person who is aggrieved by a decision of the chief executive officer refusing the issue of a certificate under subsection (2) may appeal to the Minister, whose decision is final. The chief executive officer may cancel a certificate certifying a filling station to be a small filling station if the chief executive officer is satisfied — (a) that any thing other than fuel or an accessory (as defined in section 14A(2); or goods prescribed for the purposes of (ii)

[Section 14B inserted by No. 47 of 2006 s. 11.]

referred to in section 12(1); that the filling station is not owned or operated in (b) accordance with section 14B(1) and (4); or

section 14A(1)(b), (c) or (in the case of a prescribed small filling station) (d),

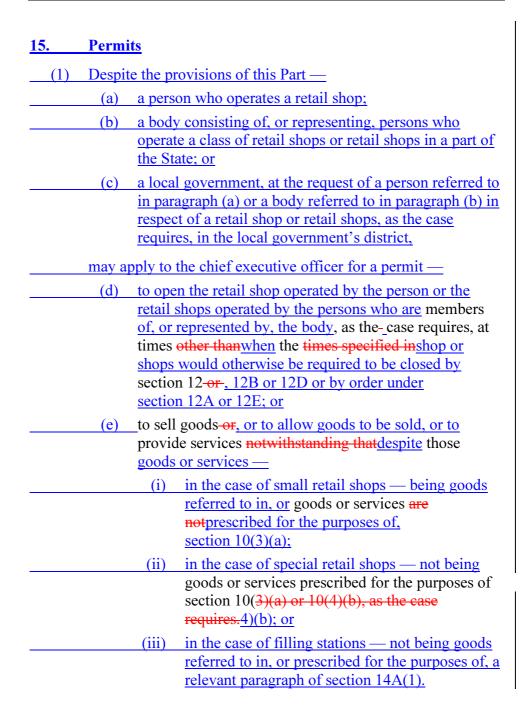
are sold at the filling station outside the trading hours

that notification has not been given as required by section 14B(3).

The cancellation of a certificate under this section does not prevent a person from being prosecuted for an offence against this Act.

[Section 14C inserted by No. 47 of 2006 s. 11.]

Compare 07 May 2007 [01-e0-03] / 11 May 2007 [01-f0-04] Extract from www.slp.wa.gov.au, see that website for further information



### s. 16

- (2) Where an application is made under subsection (1) and the chief executive officer is satisfied in relation to the shop or class of shops referred to in the application that it is desirable or necessary in the interests of the public that the shop or class of shops should be open or should be permitted to sell goods or provide services that are not goods or services, or both, prescribed for the purposes of section 10(3)(a) or 10(4)(b), as the case requires, of the kind referred to in the application by reason of an event or any circumstances that is or are in the opinion of the chief executive officer relevant the chief executive officer may issue a permit in terms of the application or in such terms as the chief executive officer thinks fit authorising the applicant or applicants to open the shop or shops referred to in the application during such hours or periods as are specified in the permit or to sell such goods or <del>classes of goods</del> or provide such services or classes of services as are specified in the permit or both.
- (2a) The chief executive officer may issue a permit under subsection (2) to open a retail shop or retail shops only if satisfied that, by reason of the event or circumstances referred to in that subsection, it is not appropriate, or it is not practicable, for an order to be made under section 12A or 12E to vary the trading hours of that shop or those shops.
  - (3) The chief executive officer may impose terms and conditions on a permit issued under subsection (2) including conditions as to the closing of retail shops specified in the permit.
  - (4) A person who contravenes any term or condition imposed under subsection (3) commits an offence.

Penalty: \$25 000.

[Section 15 amended by No. 1 of 1991 s. 4414; No. 47 of 2006 s. 12 and 17.]

### 16. Covenants relating to opening of retail shops

Notwithstanding any rule of law or construction to the contrary, where an agreement, between any person and a person operating a retail shop contains a term or covenant providing for the opening of the shop, whether at specified hours or specified times or not, the person operating the retail shop is not in breach of that term or covenant by reason only of failing to open the retail shop between the hours authorised by this Act.

[Section 16 amended by No. 1 of 1991 s. 11.]

# 17. Retail Shops Advisory Committee

- (1) There shall be established a Committee to be known as the Retail Shops Advisory Committee.
- (2) The Committee shall consist of 15 persons as follows
  - (a) one person shall be the chief executive officer or an officer of the Public Service of the State nominated by the chief executive officer who shall be chairman of the Committee; and
  - (b) 14 persons shall be appointed by the Minister as follows
    - (i) 2 persons shall be appointed on the written nomination of the body known as the W.A. Council of Retail Associations:
    - (ia) one person shall be appointed on the nomination of the body known as the Retail Traders Association of W.A. (Inc.);
    - (ii) one person shall be appointed on the written nomination of the body known as the W.A. Chamber of Commerce and Industry (Inc.);
    - (iii) 4 persons shall be appointed on the written nomination of the body known as the Shop Distributive and Allied Employees Association of Western Australia;

- (iv) 5 persons shall be persons who in the opinion of the Minister are representative of consumers;
- (v) one shall be a person who in the opinion of the Minister represents the tourist industry.
- (3) The Minister may make such arrangements as the Minister considers appropriate for the receipt of nominations for the purposes of an appointment under subsection (2)(b).
- (4) A member appointed under subsection (2)(b)
  - (a) shall hold office for such term not exceeding 3 years as is specified in the instrument appointing that member;
  - (b) is, on the expiration of the term of office of that member, eligible for re-appointment.
- (5) A member appointed under subsection (2)(b) is entitled to such remuneration and allowances as the Minister, on the recommendation of the Minister for Public Sector Management <sup>4</sup>, determines.
- (6) A nomination for the purposes of subsection (2)(a) may be made so as to operate in relation to such circumstances as are specified in the instrument of nomination and may be amended or revoked by the chief executive officer.

[Section 17 amended by No. 1 of 1991 s. 12 and 14.]

### 18. Temporary members

- (1) If a member appointed under section 17(2)(b) is or is expected to be absent or otherwise unable to perform his functions the Minister may appoint another person to act temporarily in the place of the member, and that other person while so acting has all the functions and entitlements of a member.
- (2) No act or omission of a person acting in place of another under this section shall be questioned on the ground that the occasion for his appointment or acting had not arisen or ceased.

page 36 Compare 07 May 2007 [01-e0-03] / 11 May 2007 [01-f0-04]

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The appointment of a person as a temporary member may be terminated by the Minister at any time.

#### 19. Vacation of office of member

- The office of a member appointed under section 17(2) becomes (1) vacant if he —
  - (a) resigns by written notice addressed to the Minister;
  - is an undischarged bankrupt or a person whose property is subject to an order or arrangement under the laws relating to bankruptcy;
  - is absent without leave of the Minister from (c) 3 consecutive meetings of the Committee; or
  - is removed from office by the Governor on grounds of (d) misbehaviour, incompetence, or mental or physical incapacity impairing the performance of his duties.
- Where the office of a member becomes vacant otherwise than (2) by effluxion of time the Minister may appoint another to the office, but the office of any person so appointed shall be only for the remainder of the term of the person who vacated the office of member.

#### **20. Sub-committees**

- (1) The Committee may from time to time with the approval of the Minister
  - establish sub-committees consisting of members of the (a) Committee or members of the Committee and such other persons as the Committee determines;
  - (b) discharge, alter or reconstitute any such sub-committee; and
  - (c) give directions to a sub-committee with respect to the performance of its functions.
- A sub-committee shall give effect to any direction given by the (2) Committee.

# s. 21

#### **Functions of the Committee** 21.

The functions of the Committee are to —

- investigate and make recommendations to the Minister relating to the operation and administration of this Act;
- consult with any person or body with respect to the (b) operation and administration of this Act;
- (c) consider any submissions made by any person or body on the operation or administration of this Act;
- make recommendations to the chief executive officer on the issue of permits under section 15;
- investigate and report to the Minister on the degree of (e) competition within the various sectors of the retail industry; and
- (f) monitor and report to the Minister on the effects on and costs to —
  - (i) consumers;
  - (ii) retail traders; and
  - (iii) employees in the retail industry,

of the operation and administration of this Act.

[Section 21 amended by No. 1 of 1991 s. 14.]

### Part IV — Miscellaneous

### 22. Covenants contrary to this Act negated

Notwithstanding a covenant to the contrary, a person who operates a shop is not prevented from doing and is not liable for doing such acts as are necessary to comply with the provisions of this Act.

# 23. Auctions of domestic furniture at a dwelling house

Notwithstanding anything in this Act, this Act does not apply to a *bona fide* auction of used household furniture, tools of trade, agricultural machinery or vehicles at a dwelling house or a farm that have been used for or in connection with or for the purposes of that dwelling house or farm as the case requires.

# 24. Retail shop deemed not to be closed

For the purposes of this Act, a retail shop is deemed not to be closed if —

- (a) it is not locked or otherwise effectively secured to the complete exclusion of the public; or
- (b) the person operating the retail shop or any associated person is engaged therein in obtaining orders by any means of communication relating to the sale of any goods or the provision of any services.

### 25. Offence

- (1) A person shall not in a retail shop
  - (a) during a time when the shop or portion of the shop is required to be closed under this Act sell any goods or provide any services; or
  - (b) during a time when only a limited class of goods may be sold or only a limited class of services may be provided under this Act sell any goods or provide any services other than the goods or services so limited.

### s. 26

- (2) A person who operates a retail shop
  - that is <u>certified to be</u> a small retail shop under section 10(3) contrary to the provisions of (c) and is not owned and operated in accordance with section 10(3)(a), (b), (ba), (bb), (bc), (bd) and (be); or
  - (b) that subsection is certified to be a small filling station under section 14B(1)(f) and is not owned and operated in accordance with section 14B(1)(a), (b), (c), (d) and (e),

commits an offence.

(3) A person who contravenes subsection (1) or commits an offence under subsection (2) is liable to a penalty as follows —

For a first offence, \$25 000;

For a second offence, \$36 000;

For a third offence, \$5\_\$8 000,

but in the case of a fourth or subsequent offence committed within a period of 2 years since the date of the last conviction under this Act where it is shown that the accused has engaged in a course of conduct in contravention of this Act, to a penalty of not less than \$25 000.

[Section 25 amended by No. 47 of 2006 s. 13 and 17.]

#### 26. Control of advertising of retail shopping hours

- (1) A person who operates a retail shop shall not himself or by his agent publish or cause to be published any statement which implies or suggests
  - that at a time when a retail shop is required by this Act to be closed
    - the retail shop will be open to the admission of the public for any purpose of trade or inspection;
    - (ii) any goods or services will be sold, offered for sale or provided in the retail shop; or

Compare 07 May 2007 [01-e0-03] / 11 May 2007 [01-f0-04] page 40 Extract from www.slp.wa.gov.au, see that website for further information

(iii) any person will be in attendance at the retail shop for the receipt by any means of orders for goods or services, or requests for the demonstration of goods or services or the delivery of goods whether on approval or not;

or

(b) that, at any time during which the retail shop is permitted or required by this Act to be open only for a specified purpose or purposes, or for the sale only of specified goods or provision only of specified services, or subject to a condition, the shop will be open for another purpose, or the sale of other goods or the provision of other services or contrary to any such condition.

Penalty: \$25 000.

- (2) In subsection (1) "publish" includes
  - (a) insert in any newspaper or publication in the State;
  - (b) publicly exhibit
    - (i) in, on, over, or under any building, vehicle, or place of whatsoever kind, whether on land or water; or
    - (ii) in the air in the view of persons being or passing in or on any street or public place;
  - (c) contain in any document sent or delivered to any person or thrown or left upon any premises;
  - (d) broadcast by wireless transmission or by television; and
  - (e) make verbally.

[Section 26 amended by No. 47 of 2006 s. 17.]

### 27. Powers of chief executive officer

(1) The chief executive officer may, by notice in writing require any person within such period as is specified in the notice, to

furnish such information as the chief executive officer requires for the purpose of inquiring into or ascertaining whether that person is complying with the provisions of this Act or any permit or certificate issued under this Act or as to the terms of any partnership or memorandum of association or articles of a body corporate and may require that person to produce all books and other papers whatsoever in that person's custody or under that person's control relating thereto within the time specified in the notice.

A person who fails to comply with a request by the chief executive officer made under subsection (1) commits an offence.

Penalty: \$25 000.

[Section 27 amended by No. 1 of 1991 s. 1414; No. 47 of 2006] <u>s. 17</u>.]

#### 27A. **Delegation**

The chief executive officer may, either generally or as otherwise provided by instrument of delegation, by writing signed by the chief executive officer, delegate to a person any of the functions of the chief executive officer under this Act, other than this power of delegation.

[Section 27A inserted by No. 1 of 1991 s. 13.]

#### 28. Access to books, etc.

The chief executive officer, an inspector or other person authorised by the chief executive officer in writing, whether generally or in a specific case, an authorised person shall have full and free access at any reasonable time to all buildings, places, books and other papers for any of the purposes of this Act and for any such purpose may take extracts from or copies of any such books or papers.

[Section 28 amended by No. 1 of 1991 s. 14.] 14; No. 47 of 2006 s. 16(1).7

Compare 07 May 2007 [01-e0-03] / 11 May 2007 [01-f0-04] page 42 Extract from www.slp.wa.gov.au, see that website for further information

#### **29.** Inspector may require information

- An inspector or any person authorised by the chief executive (1) officer under section 27 person may question any person whom the inspector or authorised person has reasonable cause to believe may be able to assist him with his inquiries under this Act.
- (2) An inspector or any person authorised by the chief executive officer under section 27 person may require any person who he finds committing or who he reasonably suspects has committed an offence against this Act or whom the inspector or authorised person is authorised to question under this Act, or whose name and address is in the opinion of the inspector or authorised person, reasonably required for the purpose of carrying out his duties under this Act, to state his name and address, and, if he has reasonable ground for suspecting that the name or address as stated is false, require evidence of the correctness thereof.

[Section 29 amended by No. 1 of 1991 s. 14.] 14; No. 47 of 2006 s. 16(2) and (3).]

#### 30. Obstructing an inspector, etc.

A person shall not —

- assault, resist or impede, delay or in any way obstruct an inspector or an authorised person in the exercise of his powers or in the discharge of his duties under this Act;
- fail, without lawful excuse, to answer any question put (b) to him in pursuance of this Act by an inspector or authorised person or a person acting as interpreter for an inspector or authorised person or give a false or misleading answer to any such question, or refuse to sign any declaration that he is required by or under this Act to sign:
- fail to comply in any respect with the lawful request, (c) requirement, direction or order of an inspector or authorised person;

- (d) when required by or under this Act to furnish any assistance or to furnish any information to an inspector or authorised person, fail to furnish that assistance or information or furnish false or misleading information;
- fail, when so required by an inspector or authorised (e) person, to produce any permit, certificate or authority held or had by him, or any book, notice, record, list or other document of whatsoever kind required by any Act to be held or kept by him, or required by this Act to be produced to an inspector, or fail to allow the inspector or authorised person upon him so producing the same, to make copies of or take extracts from it or of any part thereof or of any entries therein;
- (f) directly or indirectly prevent any person from appearing before or being questioned by an inspector or authorised person in accordance with this Act, or attempt to do so;
- use any threat or any abusive or insulting language to (g) any inspector or authorised person or any employee with respect to any inspection, examination or interrogation made by an inspector or authorised person; or
- impersonate an inspector.

Penalty: \$25 000.

[Section 30 amended by No. 47 of 2006 s. 17.]

#### 31. Protection of person questioned

A person shall not be required, under section 28 or 29, to answer any question or give any information tending to incriminate him, and before any person is questioned by an inspector or authorised person pursuant to this section the inspector shall advise the person accordingly.

#### **32.** Secrecy

A person who discloses or makes use of any information that has been furnished to him or obtained by him under this Act, or

Compare 07 May 2007 [01-e0-03] / 11 May 2007 [01-f0-04] page 44 Extract from www.slp.wa.gov.au, see that website for further information

in connection with the execution of this Act, commits an offence unless that information is disclosed or used —

- (a) with the consent of the person carrying on or operating any business to which that information relates; or
- (b) for the purpose of giving effect to the objects of this Act. Penalty: \$25 000.

[Section 32 amended by No. 47 of 2006 s. 17.]

### 33. False information

- (1) A person shall not
  - (a) forge, counterfeit or utter or wrongfully make use of, any certificate or permit for the purposes of this Act;
  - (b) wilfully make or sign a false statement or declaration or return required under this Act; or
  - (c) wilfully make use of any entry, declaration or return, knowing it to be false.
- (2) A person who wilfully destroys, damages, defaces or pulls down any notice, certificate, permit, licence or other document posted or exhibited in any shop pursuant to this Act is guilty of an offence.
- (3) A person who contravenes subsection (1) or (2) commits an offence.

Penalty: \$25 000.

[Section 33 amended by No. 47 of 2006 s. 17.]

### 34. Vicarious liability

(1) When a body corporate is guilty of an offence against this Act and it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of, a director, manager, secretary or other officer of the body corporate or a person who was purporting to act in any such

Compare 07 May 2007 [01-e0-03] / 11 May 2007 [01-f0-04] page 45

Extract from www.slp.wa.gov.au, see that website for further information

capacity, he, as well as the body corporate, is guilty of that offence.

(2) When the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts or omissions of a member of the body corporate in connection with his functions of management as if he were a director of the body corporate.

#### **35.** Printing of forms and records

All records, books, forms, or other documents required to be kept under this Act by an occupier may be printed by the Government Printer, and may be obtained from the Government Printer or an inspector at a fee to be prescribed.

#### **36.** English language to be used

All records, books or other documents authorised or required to be kept under this Act and all notices required to be exhibited under this Act shall be in legible writing in the English language.

#### **37.** Consent of the chief executive officer

Proceedings for an offence against this Act shall not be commenced without the consent in writing of the chief executive officer.

[Section 37 amended by No. 1 of 1991 s. 14.]

#### 38. Protection of officers, members and others

No liability attaches to the chief executive officer, any inspector, authorised person, officer of the Department, or to the Committee or a sub-committee or any member of the Committee or any sub-committee for any act or omission that occurred in good faith and in exercise or purported exercise or in discharge or purported discharge of his or its functions under this Act.

Compare 07 May 2007 [01-e0-03] / 11 May 2007 [01-f0-04] page 46 Extract from www.slp.wa.gov.au, see that website for further information

[Section 38 amended by No. 1 of 1991 s. 14.]

#### 39. **Evidentiary**

In any prosecution for offences against this Act —

- it is not necessary to prove the appointment of an inspector or authorised person or his authority to do any act, to issue any order, to give any direction or notice, to make any request or to take any proceedings, but nothing in this paragraph prevents the right of the accused to prove the extent of that authority;
- a signature purporting to be that of the Minister, the chief executive officer or any inspector or authorised person shall be taken to be the signature of the person whose signature it purports to be until the contrary is proved;
- a statement signed by the chief executive officer that a (c) certificate or permit, of the description mentioned in the statement has or had not been issued pursuant to this Act to a person in respect of any premises specified in the statement, and, in the case of a certificate or permit that has been so issued, as to the date of issue of, and the particulars contained in, the certificate or permit, is evidence of the matters specified in the statement;
- (d) the allegation in or averment in any charge that any building, premises or other place is, or was at the time stated therein, a retail shop, is evidence thereof;
- evidence of a person being found in any shop is proof that the person was employed therein unless the contrary is proved;
- it shall not be necessary to prove the limits of any area, (f) part of an area, radius or zone prescribed by or under this Act, but this paragraph does not prevent the right of the accused to prove the facts relating thereto;
- a statement signed by the chief executive officer stating (g) the class to which any retail shop specified in the

- certificate belongs, or stating that a class of articles as so specified are usually sold in a specified class of business, is proof of the matters so specified until the contrary is proved; and
- any work done in a retail shop shall be deemed to have (h) been done, or any person employed therein shall be deemed to have been employed, with the knowledge and by the authority of the person operating the retail shop unless the contrary is proved.

[Section 39 amended by No. 1 of 1991 s. 14; No. 84 of 2004 s. 80 and 82.1

#### **40.** Regulations

- The Governor may make regulations prescribing all matters that (1) are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.
- Without limiting the generality of this subsection, the (2) regulations may
  - prescribe the forms and documents that are required to be given under this Act or kept for the purposes of this
  - (b) prescribe requirements relating to the giving, furnishing and keeping of information and forms under this Act;
  - provide for and regulate applications for and the (c) granting of permits, certificates or other authorities under this Act:
  - prescribe fees payable under this Act; (d)
  - prescribe penalties not exceeding \$\frac{1}{2} 000 for an offence against any regulations under this Act and provide in the case of a continuing offence for a penalty not exceeding \$300500 for every day during which the offence continues.

Compare 07 May 2007 [01-e0-03] / 11 May 2007 [01-f0-04] page 48 Extract from www.slp.wa.gov.au, see that website for further information

[Section 40 amended by No. 47 of 2006 s. 17.]

## Minister to review and report on Act

- (1) As soon as The Minister is practicable after the expiration to carry out a review of the period of 5 years following the coming into operation and effectiveness of this Act the Minister shall cause an investigation and review to be conducted, and a report to be prepared as to
- (a) the operation as soon as is practicable after the expiry of 3 years from the commencement of this Act;
- the operation of the Committee; the Retail Shops and Fair Trading Legislation Amendment Act 2006 section 14.
  - (c) the need for this Act to continue in operation.
  - The Minister shall is to prepare a report based on the review (2) and, as soon as is practicable after the report is prepared, is to cause a copy of the report prepared for the purposes of subsection (1) to be laid before each House of Parliament as soon as is practicable after it is completed.

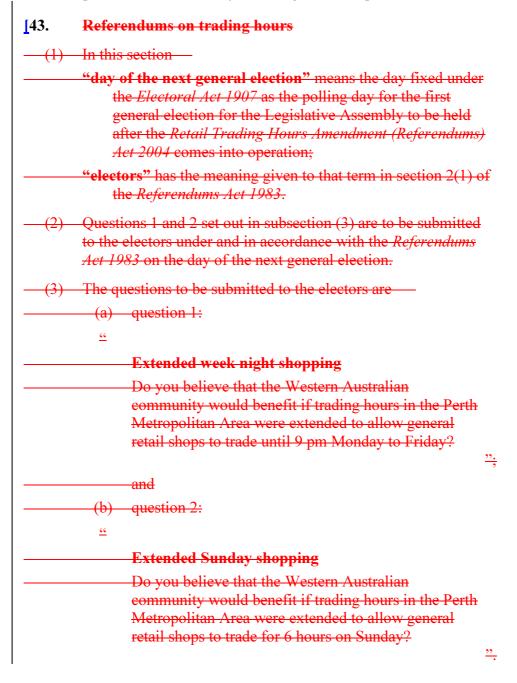
[Section 41 inserted by No. 47 of 2006 s. 14.]

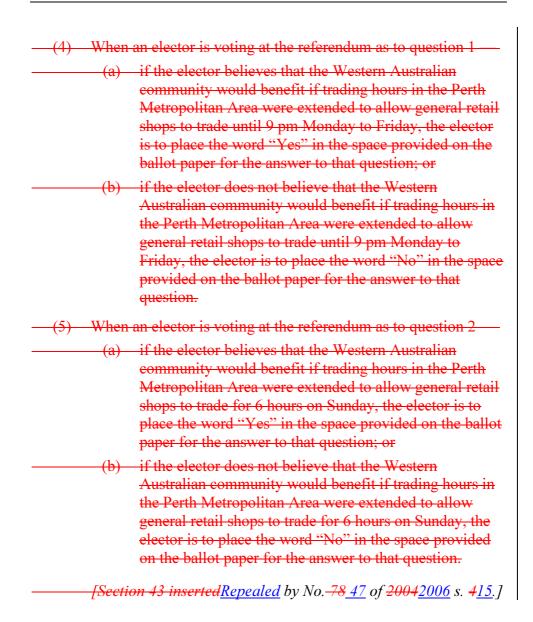
#### **42. Savings**

- Notwithstanding anything in section 10(3) or 10(4) where a (1) retail shop was immediately before the commencement day an exempted shop for the purposes of the Factories and Shops Act 1963 5 the person operating the retail shop is entitled to be issued with a permit under section 15 of this Act to sell at that retail shop goods that were prescribed to be exempted goods under the regulations made under that Act and in force immediately before the commencement day and to remain open as though section 12 of this Act had not come into operation.
- (2) In subsection (1) —
  - "commencement day" means the day on which this Act comes into operation.

Compare 07 May 2007 [01-e0-03] / 11 May 2007 [01-f0-04] page 49 Extract from www.slp.wa.gov.au, see that website for further information

# [Section 42 amended by No. 73 of 1994 s. 4.]





### **Notes**

This is a compilation of the Retail Trading-Hours Act 1987 and includes the amendments made by the other written laws referred to in the following table-<sup>1a</sup>. The table also contains information about any reprint.

# **Compilation table**

Short title	Number and year	Assent	Commencement
Retail Trading Hours Act 1987	123 of 1987	31 Dec 1987	1 Sep 1988 (see s. 2 and <i>Gazette</i> 12 Aug 1988 p. 2695)
Retail Trading Hours Amendment Act 1991	1 of 1991	17 May 1991	Act other than s. 12: 2 Aug 1991 (see s. 2 and Gazette 2 Aug 1991 p. 3991); s. 12: 1 Nov 1991 (see s. 2 and Gazette 1 Nov 1991 p. 5588)
Acts Amendment (Public Sector Management) Act 1994 s. 3(2)	32 of 1994	29 Jun 1994	1 Oct 1994 (see s. 2 and <i>Gazette</i> 30 Sep 1994 p. 4948)
Statutes (Repeals and Minor Amendments) Act 1994 s. 4	73 of 1994	9 Dec 1994	9 Dec 1994 (see s. 2)
Pawnbrokers and Second-hand Dealers Act 1994 s. 100	88 of 1994	5 Jan 1995	1 Apr 1996 (see s. 2 and <i>Gazette</i> 29 Mar 1996 p. 1495)
Local Government (Consequential Amendments) Act 1996 s. 4	14 of 1996	28 Jun 1996	1 Jul 1996 (see s. 2)
Reprint of the <i>Retail Trad</i> listed above)	ing Hours Act	<i>1987</i> as at 18 J	an 2002 (includes amendments
Retail Trading Hours Amendment (Referendums) Act 2004	78 of 2004	8 Dec 2004	8 Dec 2004 (see s. 2)
Criminal Procedure and	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and

Appeals (Consequential and Gazette 31 Dec 2004 p. 7129 Other Provisions) Act 2004 (correction in Gazette s. 80 and 82 7 Jan 2005 p. 53))

Compare 07 May 2007 [01-e0-03] / 11 May 2007 [01-f0-04] Extract from www.slp.wa.gov.au, see that website for further information

Short title	Number and year	Assent	Commencement
Retail Shops and Fair Trading Legislation Amendment Act 2006 Pt. 2	47 of 2006	4 Oct 2006	11 May 2007 (see s. 2 and Gazette 11 May 2007 p. 2017)
Liquor and Gaming Legislation Amendment	73 of 2006	13 Dec 2006	7 May 2007 (see s. 2(2) and <i>Gazette</i> 1 May 2007 p. 1893)

On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

### **Provisions that have not come into operation**

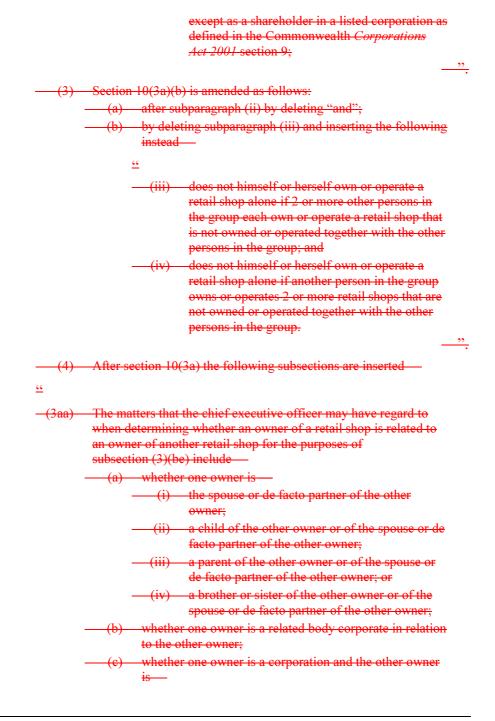
Short title	Number and year	Assent	Commencement
Retail Shops and Fair Trading Legislation Amendment Act 2006 Pt. 2 6	<del>47 of 2006</del>	4 Oct 2006	To be proclaimed (see s. 2)

- <sup>2</sup> Footnote no longer applicable.
- In respect of matters arising after 1 Jan 1991, the operation of the Companies (Western Australia) Code is subject to the provisions in the Corporations (Western Australia) Act 1990 Pt. 13 Div. 2. The Corporations (Western Australia) Act 1990 was superseded by the Corporations Act 2001 of the Commonwealth on 15 Jul 2001.
- Footnote no longer applicable.
- Under the *Public Sector Management Act 1994* s. 112(2), a reference in a written law to the Public Service Board is, unless the contrary intention appears or it is otherwise provided under the *Acts Amendment (Public Sector Management) Act 1994*, to be construed as if it had been amended to be a reference to the Minister for Public Sector Management (as defined in the *Interpretation Act 1984*). This reference was amended under the *Reprints Act 1984* s. 7(5)(a).
- Repealed by the *Industrial Relations Legislation Amendment and Repeal Act 1995*.
- On the date as at which this compilation was prepared, the The Retail Shops and Fair Trading Legislation Amendment Act 2006 Pt. 2 had not come into operation. Its. 18 reads as follows:

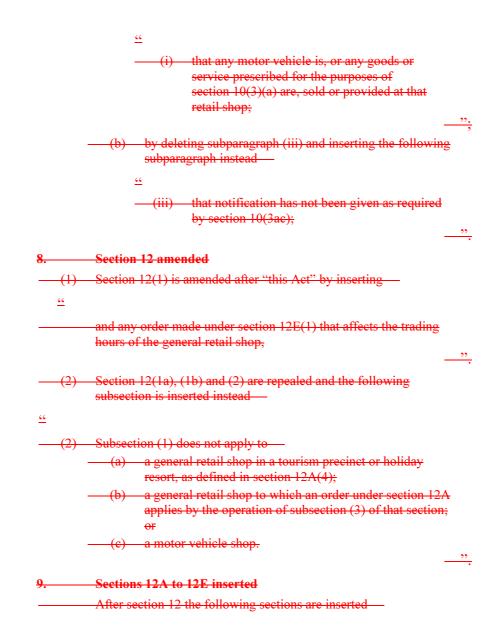
" Part 2 Retail Trading Hours Act 1987 **Division 1** Amendments The Act amended The amendments in this Part are to the Retail Trading Hours Act 1987. Section 3 amended Section 3(1) is amended after the definition of "member" by inserting the following definitions— " "motor vehicle" has the meaning given to that term in the Road Traffic Act 1974 section 5(1); "motor vehicle shop" means a general retail shop or portion of a general retail shop, as the case may be (a) in, on or from which motor vehicles are sold by way of retail sale: or (b) in, on or from which spare parts for motor vehicles are sold by way of retail sale in conjunction with the sale of motor vehicles; Section 5 replaced Section 5 is repealed and the following section is inserted instead \_\_\_ 5. Interpretation Act applies to orders An order made by the Minister under this Act is subsidiary legislation as defined in the Interpretation Act 1984 section 5. (2) The Interpretation Act 1984 section 42 applies to an order made under section 10(3b) or 14B(4) as if the order were a regulation. Section 10 amended (1) Section 10(3) is amended as follows: by deleting paragraph (a) and inserting the following paragraph instead

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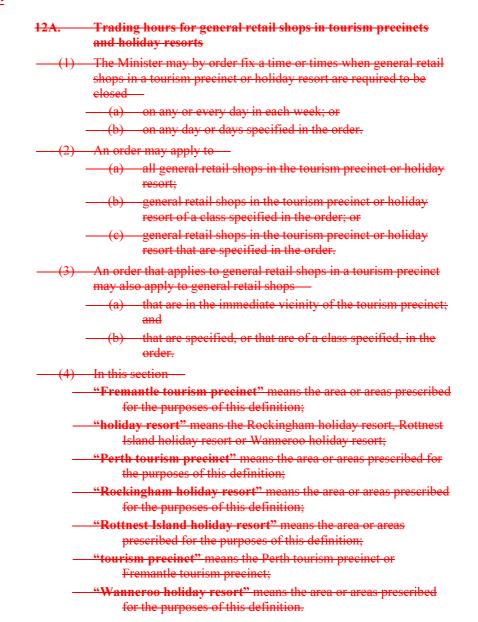
<u> </u>	
<del>(a)</del>	neither motor vehicles, nor goods or services prescribed for the purposes of this paragraph, are sold or provided at the retail shop;
— (b)	in paragraph (b) by deleting "4" in both places where it occurs and inserting instead  "6":
(c)	in paragraph (bc) by deleting "5 persons" and inserting instead  " 13 persons ";
<del>(d)</del>	
<u> </u>	
	but excluding any person who is employed at the retail shop as an apprentice, as defined in the <i>Industrial</i> Training Act 1975 section 4(1)  "".
<del>(e)</del>	after paragraph (bc) by deleting "and";
<del>(f)</del>	after paragraph (bd) by inserting
<u>"</u>	
— (be)	no owner of the retail shop is related, in the opinion of the chief executive officer, to an owner of another retail shop that is in such close proximity to the first mentioned retail shop that, in the opinion of the chief executive officer, those retail shops are to be regarded as occupying the same location; and
<i>(</i> )	<u>".</u>
— <del>(g)</del> ———	in paragraph (c) after "subsection" by inserting—  ", and that certificate has not been cancelled—".
	1 10(3a)(a) is amended as follows:
<del>(a)</del>	— after subparagraph (i) by inserting—  — " and ";
<del>(b)</del>	by deleting subparagraph (ii) and inserting the following instead
	<u>«</u>
	— (ii) does not own or operate, either alone or together with any other person, more than 3 retail shops



	— (i) an officer of the corporation; or
	— (ii) a majority shareholder in the corporation;
	(d) whether one owner is accustomed or under an obligation,
	whether formal or informal, to act in accordance with the
	directions, instructions or wishes of the other owner in
	relation to the operation of the first-mentioned owner's
	retail shop;
	(e) whether one owner is
	(i) an employee or partner of the other owner; or
	— (ii) an agent, banker, solicitor, accountant, auditor
	or other person acting in any capacity for or on behalf of the other owner;
	——————————————————————————————————————
	— (f) whether one owner is
	(i) a trustee for the other owner; or
	(ii) a trustee of a trust of which the other owner is a
	discretionary or other beneficiary.
(2 -1.)	•
<del>(3ab)</del>	In subsection (3aa)
	"corporation" has the meaning given to that term in the Commonwealth Corporations Act 2001 section 57A;
	"officer" has the meaning given to that term in the
	Commonwealth Corporations Act 2001 section 9;
	"related body corporate" has the meaning given to that term in
	the Commonwealth Corporations Act 2001 section 9.
<del>(3ac)</del>	A person who operates a small retail shop is required to notify the
	chief executive officer within 14 days after
	— (a) a person becomes or ceases to be an owner of the retail
	<del>shop; and</del>
	(b) if the owner of the retail shop is a body corporate a
	person becomes or ceases to be a shareholder of the body
	<del>corporate.</del>
	·
<del>(5)</del>	Section 10(3c) is repealed.
<del>7.</del>	Section 11 amended
	Section 11(4)(a) is amended as follows:
	(a) by deleting subparagraph (i) and inserting the following
	subparagraph instead—



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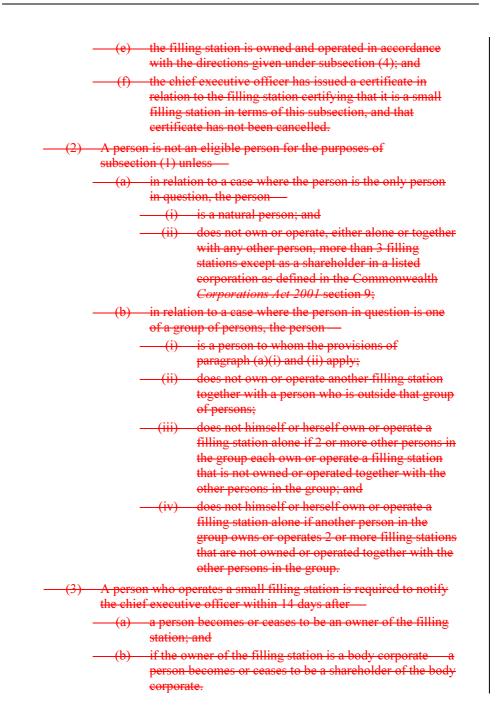


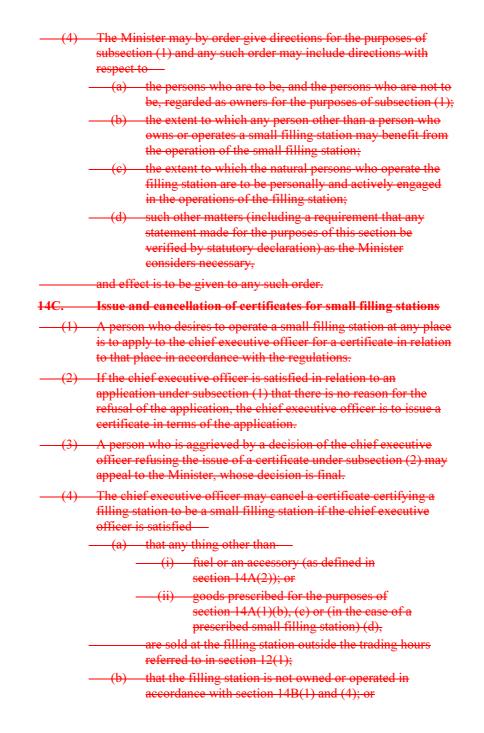
<del>12B.</del>	Trading hours for motor vehicle shops
	Subject to this Act and any order made under section 12E(1) that affects the trading hours of the motor vehicle shop, a motor vehicle shop is required to be closed—
	(a) on Monday, Tuesday, Thursday and Friday in each week until 8 a.m. and from and after 6 p.m.;
	(b) on Wednesday in each week until 8 a.m. and from and after 9 p.m.;
	— (c) on Saturday in each week until 8 a.m. and from and after 1 p.m.;
	— (d) on Sunday in each week; and
	(e) on each public holiday and public half holiday.
<del>12C.</del>	No restriction on trading hours for small retail shops
	A small retail shop may be open at any time.
<del>12D.</del>	Trading hours for special retail shops
	Subject to this Act and any order made under section 12E(1) that affects the trading hours of the special retail shop, a special retail shop is required to be closed on every day of the year until 6 a.m. and from and after 11.30 p.m
12E.	Variation of trading hours
<del>(1)</del>	The Minister may by order vary the trading hours of retail shops by —
	(a) requiring retail shops to be closed at a time or times when the shops would otherwise not be required to be closed under section 12(1), 12B or 12D; or
	(b) authorising retail shops to be open at a time or times when the shops would otherwise be required to be closed under any of those provisions.
<del>(2)</del>	An order varying the trading hours of general retail shops in the metropolitan area (other than an order under section 12A) can have effect only—
	— (a) in relation to a day or days within the period of 28 days ending on 1 January; or

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<del>(3)</del>	Subject to subsection (2), an order varying the trading hours of general retail shops may apply to—
	<ul><li>(a) all general retail shops;</li><li>(b) general retail shops of a specified class;</li></ul>
	(d) general retail shops in a specified area; or
	— (d) a specified general retail shop.
<del>- (4)</del>	An order varying the trading hours of motor vehicle shops may
	apply to
	(a) all motor vehicle shops;
	(b) motor vehicle shops of a specified class;
	(c) motor vehicle shops in a specified area; or
	— (d) a specified motor vehicle shop.
<del>(5)</del>	An order varying the trading hours of special retail shops may
	apply to—
	— (a) all special retail shops;
	(b) special retail shops of a specified class;
	— (c) special retail shops in a specified area; or
	— (d) a specified special retail shop.
<del>(6)</del> -	An order varying the trading hours of retail shops may apply to
	— (a) all retail shops; or
	(b) any specified portion of retail shops,
	in which one or more classes of specified goods or services, or
	goods and services, are sold or provided.
<del>(7)</del>	An order varying the trading hours of retail shops may apply to
(,)	— (a) any or every day in each week; or
	(b) a specified day or specified days.
(8)	— In this section—
(0)	
	"specified", in relation to an order, means specified in the order.
10.	Section 13 repealed
	Section 13 is repealed.
11.	Section 14 replaced by sections 14 to 14C
	Section 14 is repealed and the following sections are inserted instead—

" No restriction on trading hours for filling stations A filling station may be open at any time. 14A. Sale of goods at filling stations A person who operates a filling station is not, at any time outside the trading hours referred to in section 12(1), to sell or allow to be sold at the filling station any thing that is not (a) fuel or an accessory; (b) one of the goods prescribed for the purposes of this paragraph; in the case of a small filling station fuel or an accessory or one of the goods prescribed for the purposes of paragraph (b) or this paragraph; or in the case of a prescribed small filling station fuel or an accessory or one of the goods prescribed for the purposes of paragraph (b) or (c) or this paragraph. In this section "accessory" means (a) lubricant in any form, tyre, tube, battery, part or accessory; or any other thing, other than fuel, required to equip or operate a motor vehicle. **Small filling stations** For the purposes of section 14A(1)(e), a filling station is to be regarded as a small filling station if (a) the filling station is owned by (i) one eligible person; (ii) not more than 6 eligible persons trading in partnership; or a body corporate with not more than 6 shareholders all of whom are eligible persons; the filling station is operated for the benefit of the eligible persons referred to in paragraph (a); the eligible persons referred to in paragraph (a) are personally and actively engaged in the filling station; not more than 10 persons (including the eligible persons who own and operate the filling station) work in the filling station at any one and the same time;

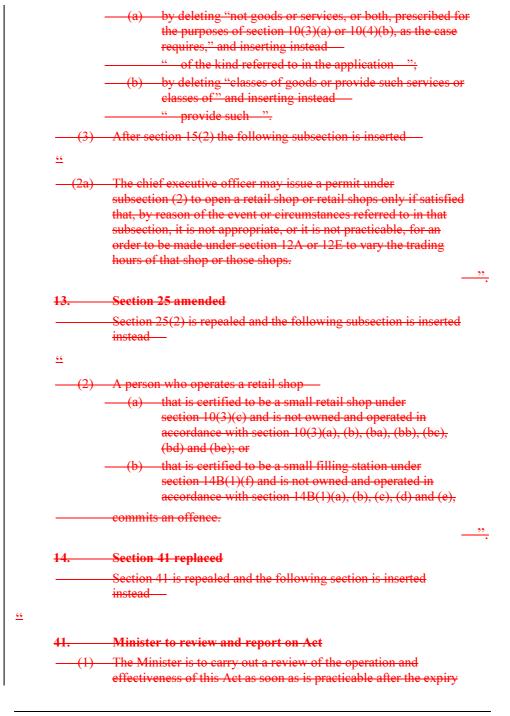




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	(c) that notification has not been given as required by section 14B(3).
<del>(5)</del>	The cancellation of a certificate under this section does not prevent a person from being prosecuted for an offence against this Act.
12.	Section 15 amended
<del>(1)</del>	Section 15(1) is repealed and the following subsection is inserted instead—
	Despite the provisions of this Part
	— (a) a person who operates a retail shop;
	<ul> <li>(b) a body consisting of, or representing, persons who         operate a class of retail shops or retail shops in a part of         the State; or</li> </ul>
	(c) a local government, at the request of a person referred to in paragraph (a) or a body referred to in paragraph (b) in respect of a retail shop or retail shops, as the case requires, in the local government's district,
	may apply to the chief executive officer for a permit
	(d) to open the retail shop operated by the person or the retail shops operated by the persons who are members of, or represented by, the body, as the case requires, at times when the shop or shops would otherwise be required to be closed by section 12, 12B or 12D or by order under section 12A or 12E; or
	(e) to sell goods, or to allow goods to be sold, or to provide
	services despite those goods or services  (i) in the case of small retail shops—being goods referred to in, or goods or services prescribed for the purposes of, section 10(3)(a);  (ii) in the case of special retail shops—not being goods or services prescribed for the purposes of section 10(4)(b); or
	— (iii) in the case of filling stations—not being goods referred to in, or prescribed for the purposes of, a relevant paragraph of section 14A(1).  ———————————————————————————————————

— (2) Section 15(2) is amended as follows:



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	of 3 years from the commencement of the <i>Retail Shops and Fair Trading Legislation Amendment Act 2006</i> section 14.	
<del>(2)</del>	The Minister is to prepare a report based on the review and, as soon as is practicable after the report is prepared, is to cause a copy of the report to be laid before each House of Parliament.	,,
15.	Section 43 repealed	
	Section 43 is repealed.	
<del>16.</del>	Amendments relating to "authorised person"	
<del>(1)</del>	Section 28 is amended by deleting "other person authorised by the chief executive officer in writing, whether generally or in a specific case," and inserting instead—	
	" an authorised person ".	
<del>(2)</del>	Section 29(1) is amended as follows:  (a) by deleting "any person authorised by the chief executive officer under section 27" and inserting instead	
	<pre>" authorised person ";  (b) after "the inspector" by inserting " or authorised person ".</pre>	
<del>(3)</del>	Section 29(2) is amended by deleting "any person authorised by the chief executive officer under section 27" and inserting instead—	
	" authorised person ".	
<del>17.</del>	Amendments relating to penalties	
	Each provision mentioned in column 1 of the Table to this section is amended by deleting the corresponding amount in column 2 and inserting instead the corresponding amount in column 3.	
	Tabla	

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Table				
Column 1	Column 2	Column 3		
s. 15(4)	<del>\$2.000</del>	<del>\$5 000</del>		
s. 25(3)	<del>\$2.000</del>	<del>\$5 000</del>		
s. 25(3)	<del>\$3-000</del>	<del>\$6 000</del>		
s. 25(3)	<del>\$5 000</del>	<del>\$8 000</del>		
s. 26(1)	<del>\$2.000</del>	<del>\$5 000</del>		
s. 27(2)	<del>\$2.000</del>	<del>\$5 000</del>		
s. 30	<del>\$2.000</del>	<del>\$5 000</del>		
<del>s. 32</del>	<del>\$2.000</del>	<del>\$5 000</del>		
<del>s. 33(3)</del>	<del>\$2 000</del>	<del>\$5 000</del>		
s. 40(2)(e)	<del>\$1 000</del>	<del>\$2 000</del>		

Column 1	Column 2	Column 3
s. 40(2)(e)	<del>\$300</del>	<del>\$500</del>

### **Division 2** Validation

### 18. Validation

An order made, or purporting to have been made, under the *Retail Trading Hours Act 1987* section 5, 10, 12, 13 or 14 that had effect, or purported to have effect, immediately before the commencement of this section —

- (a) is taken to have been validly made under that section of that Act;
- (b) continues, on and after that commencement, to have effect and the force of law; and
- (c) in relation to an order made under section 5, 12, 13 or 14 of that Act that continues to have effect and the force of law under paragraph (b) may be amended or revoked as if it had been made under section 12E of that Act as amended by this Act.

,,